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by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 4, is amended by adding the following as a new appropriately designated section:

65-4-_____. **Declaration of Telecommunications Services Policy.** The General Assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services based on competition. To that end, the regulation of telecommunications services and telecommunications service providers shall be based on facilitating the transition from the present regulatory system to one based on competition, with protection for the interests of consumers, without unreasonable prejudice or disadvantage to any telecommunications service provider and with the provision of more flexible forms of regulation. Universal service shall be maintained and the rates charged to residential customers for essential services shall remain affordable.

SECTION 2. Tennessee Code Annotated, Section 65-4-101 is amended by adding the words and punctuation "telecommunications services," between the comma following the word "telegraph" and the words "or any other like system."

SECTION 3. Tennessee Code Annotated, Section 65-4-101 is amended by adding the following new language as Subsections (c), (d), (e), (f), and (g):

(c) "Telecommunications Service Provider" means any individual, entity, or Incumbent Local Exchange Telephone Company, authorized by law to provide, and

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offering or providing for hire, any telecommunications service, telephone service, telegraph service, paging service, or communications service similar to such services unless otherwise exempted from this definition by state or federal law.

(d) "Incumbent Local Exchange Telephone Company" means a public utility offering and providing Basic Local Exchange Telephone Service as defined by Section 65-5-208 pursuant to tariffs approved by the Commission prior to the effective date of this Act.

(e) "Competing Telecommunications Service Provider" means any individual or entity that offers or provides any two-way communications service, telephone service, telegraph service, paging service, or communications service similar to such services and is certificated as a provider of such services after the effective date of this Act unless otherwise exempted from this definition by state or federal law.

(f) "Interconnection Services" means telecommunications services, including intrastate switched access service, that allow a Telecommunications Service Provider to interconnect with the networks of all other Telecommunications Service Providers.

(g) "Gross Domestic Product-Price Index (GDP-PI)" means the final estimate of the Chain-Weighted Gross Domestic Product-Price Index as prepared by the U.S. Department of Commerce and published in the Survey of Current Business, or its successor.

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SECTION 4. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language:

Section 65-5-207. **Essential Residential Services -- Universal Service.**

(a) "Essential Residential Services" are telecommunications services which are comprised of one or more access lines, dial tone, touchtone, and usage provided to the premises of residential customers for the provision of high quality, two-way switched voice transmission, within a local calling area, or other service required by state or federal statute, or other service determined by the Commission to be essential in accordance with the provisions of this section.

(b) Universal service, consisting of Essential Residential Services and carrier-of-last resort obligations must be maintained after the local telecommunications markets are opened to competition. In order to insure the availability of affordable Essential Residential Services, the Commission shall formulate policies, promulgate rules and issue orders which require all telecommunications service providers to contribute to the support of universal service.

(c) The Commission shall promptly after the effective date of this Act institute a generic contested case proceeding to determine the cost of providing universal service, determine initial and prospective sources of support for universal service and their associated amounts, identify and evaluate the feasibility of alternative universal support mechanisms, identify which Telecommunications Service Provider should provide

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universal service in any territory, determine the advisability of coordinating Tennessee universal support mechanisms with any federal universal support mechanism, and determine a timetable for implementing its determinations. Any universal support mechanism shall require all authorized Telecommunications Service Providers to participate in supporting universal service on an equitable and competitively neutral basis, limit contributions to amounts necessary to support universal service and fund administration of the mechanism, be fair to all categories of consumers and to all Telecommunications Service Providers and prevent the unwarranted subsidization of any Telecommunications Service Provider's rates by consumers or by another Telecommunications Service Provider.

(d) In conducting the generic contested case proceeding, the Commission shall proceed as expeditiously as is feasible, shall utilize prehearing conferences, control and expedite discovery and other prehearing procedures, issue and enforce scheduling orders, and shall enter its final order by January 1, 1996.

(e) The Commission shall monitor the continued functioning of universal service mechanisms and shall conduct investigations, issue show cause orders, entertain petitions or complaints, or adopt rules in order to assure that the universal service mechanism is modified and enforced in accordance with the criteria set forth in this section.

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(f) In conjunction with creating or modifying universal service mechanisms, the Commission shall have the power, on its own initiative through show cause orders or on the petition of a Telecommunications Service Provider, to adjust the rates, including without limitation maximum rates or price ceilings, of any Telecommunications Service Provider in order to assure that the effect of the universal service mechanism does not impose unfair burdens on the Telecommunications Service Provider or on any category of consumer and is consistent with the standards set forth in this part.

SECTION 5. Tennessee Code Annotated, Section 65-4-203 is amended by adding the following new Subsection (c):

(c) The provisions of this Section shall not apply to Telecommunications Service Providers.

SECTION 6. Tennessee Code Annotated, Section 65-4-207 is amended by designating the existing language as Subsection (a) and by adding the following new Subsection (b):

(b) The provisions of this section shall not apply to Telecommunications Service Providers; provided, however, this section shall continue to apply with respect to any ordinance adopted, and any franchise granted pursuant to such an ordinance, prior to the effective date of this Act.

SECTION 7. Tennessee Code Annotated, Section 65-4-201 is amended by designating the existing language as Subsection (a) and by adding new Subsections (b), (c) and (d) as follows:

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(b) No individual or entity shall offer or provide any individual or group of telecommunications services, or extend its territorial area of operations without first obtaining from the Commission a certificate of convenience and necessity for such service or territory; provided, however, that no Telecommunications Service Provider offering and providing a Telecommunications Service under the authority of the Commission on the effective date of this Act shall be required to obtain additional authority in order to continue to offer and provide such Telecommunications Service as it offers and provides as of such effective date.

(c) After notice to the Incumbent Local Exchange Telephone Company and other interested parties and following a hearing, the Commission shall grant a certificate of convenience and necessity to a Competing Telecommunications Service Provider if after examining the evidence presented, the Commission finds:

(i) The applicant has demonstrated that it will adhere to all applicable Commission policies, rules and orders; and

(ii) The applicant possesses sufficient managerial, financial and technical abilities to provide the applied for services.

A Commission order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a Competing Telecommunications Service Provider shall be entered no more than sixty (60) days from the filing of the application, if feasible. In evaluating such applications, the

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Commission shall encourage the participation of minorities in the ownership and operation of Telecommunications Service Providers.

(d) Subsection (c) shall not be applicable to areas served by an Incumbent Local Exchange Telephone Company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a Competing Telecommunications Service Provider or unless such Incumbent Local Exchange Telephone Company applies for a certificate to provide telecommunications services in an area outside its service area existing on the effective date of this Act.

(e) The granting of certificates of convenience and necessity to competing telecommunications service providers shall not be dependent on the promulgation of rules or the completion of any other proceeding.

SECTION 8. Tennessee Code Annotated, Title 65, Chapter 4, is amended by adding the following as a new appropriately designated Section:

65-4-_____ . Interconnection.-- (a) All Telecommunications Service Providers shall provide non-discriminatory interconnection to their public networks under reasonable terms and conditions; and all Telecommunications Service Providers shall, to the extent that it is technically and financially feasible, be provided desired features, functions and services promptly, and on an unbundled and non-discriminatory basis from all other Telecommunications Service Providers.

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(b) Prior to January 1, 1996, the Commission shall, at a minimum, promulgate rules to implement the requirements of Subsection (a) and to provide for unbundling of service elements and functions, terms for resale, interLATA presubscription, number portability, and packaging of a Basic Local Exchange Telephone Service or unbundled features or functions with services of other providers.

SECTION 9. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language as:

65-5-208. Rate Regulation for Telecommunications Services. -- (a) The rates of Telecommunications Service Providers should be regulated to the extent necessary as a substitute for competition; and to the extent competitive forces in the market for Telecommunications Services are adequate and effective, regulation should be relaxed. To implement those principles, the Commission, on its own initiative, or on the petition of one or more Telecommunications Service Providers, after notice and hearing in accordance with contested case procedures, shall exempt from the requirements of this Part a Telecommunications Service for which competition is an effective regulator of rates for that service; and may partially exempt, or adjust the regulation of, a Telecommunications Service or group of Telecommunications Services in accordance with those principles.

(b) Effective January 1, 1996, an Incumbent Local Exchange Telephone Company shall adhere to minimum rates for its competitive services, subject to the

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requirements for universal service provided in Section 65-5-207. Such minimum rates shall equal the Incumbent Local Exchange Telephone Company's tariffed rates for essential elements utilized by Competing Telecommunications Service Providers plus the total long-run incremental cost of the competitive elements of the service. On the petition of any Telecommunications Service Provider, the Commission may exempt a Telecommunications Service or group of Telecommunications Services provided by an Incumbent Local Exchange Telephone Company from the requirements for minimum rates, or modify such requirements, on finding that such requirements are no longer necessary for protection against competitive abuse.

(c) On the basis of preserving the effectiveness of competition as a regulator of rates, the Commission shall adopt rules, entertain complaints and issue show cause orders, to prohibit cost-subsidization, preferences to competitive services or affiliated entities, predatory pricing, price squeezing, price discrimination, tying arrangements or other anti-competitive practices.

(d) Any Incumbent Local Exchange Telephone Company, not subject to a rate flexibility plan as provided in Section 65-5-209, shall remain subject to rate base/rate of return regulation, as the Commission from time to time may modify the requirements of that form of regulation consistent with the principles set forth in Subsection (a) above.

SECTION 10. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language as:

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65-5-209. Rate Flexibility Plans. -- (a) On the petition of an Incumbent Local Exchange Telephone Company, the Commission may approve a rate flexibility plan for that company. Any such plan, in addition to the requirements of this Section, shall be subject to the requirements for universal service as provided in Section 65-5-207, to the requirements for interconnection as provided in Part 4 of Title 65, to the provisions of Section 65-5-208, to the provisions of this Title prohibiting unjust discrimination, undue preferences, and unjust practices by public utilities, and to the procedures, penalties, and remedies of the Commission with respect to public utilities.

(b) Rate flexibility plans shall distinguish between Basic Local Exchange Telecommunications Services and Non-Basic Services, between initial rates and subsequent rates, between services offered on the effective date of the Act and new services, shall provide for maximum rates, for minimum rates for competitive services in accordance with Section 65-5-208 and for rates for interconnection services.

(c) For the purposes of this Section:

(i) "Basic Local Exchange Telephone Services" are telecommunications services which are comprised of an access line, dial tone, touchtone and usage provided to the premises of residential customers or business customers for the provision of high quality, two-way switched voice transmission, within a local calling area, or other services required by state or federal statute.

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(ii) "Non-Basic Services" are telecommunications services which are not defined as Basic Local Exchange Telephone Services and not exempted under the provisions of this Act.

(d) At any time after the effective date of this Act, without being dependent on the adoption of rules or on any other proceeding, any Incumbent Local Exchange Telephone Company may file a petition for the implementation of a rate flexibility plan. Such a petition shall describe with reasonable specificity the provisions of the proposed plan and shall demonstrate its consistency with the requirements of this Section. Promptly after the filing of such petition, the Commission shall commence a contested case proceeding to determine whether the plan should be approved as complying with the provisions of this Section, or modified to assure such compliance; and to determine the initial maximum rates to be charged pursuant to the plan.

(e) Since regulation is a substitute for competition, the objective in setting maximum initial rates is to approximate the maximum rates for each service which could be charged in a competitive market. Since rates for specific services set under existing rate base rate of return regulation have not been set on that basis, in effecting the transition to a rate flexibility plan, the Commission shall, first, determine whether the then existing rates of the petitioner are just and reasonable, by conducting an audit of the most recently filed TPSC 3.01 Report of that company. That audit shall be conducted by the Commission pursuant to its rules and generally accepted accounting procedures, but

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nothing herein is to be construed as a diminishment or expansion of the audit powers of the Commission for this purpose. The Commission shall, then, approve a design for rates for specific services which affords the petitioner a fair rate of return on the basis of that audit and which is also appropriate for the initial maximum rates of the petitioner, taking into account the need to balance the objective of such maximum rates and the need for an orderly transition from the existing rate design to reliance on competition.

(f) The Commission shall conduct proceedings on such a petition as expeditiously as feasible, shall utilize prehearing conferences, control and expedite discovery and other prehearing proceedings, issue and enforce scheduling orders and shall enter its final order within one hundred twenty (120) days after the filing of the petition.

(g) After initial rates are determined, subsequent maximum rates shall be subject to a maximum annual adjustment that is capped at the percentage change in inflation for the United States using the Gross Domestic Product-Price Index (GDP-PI) from the preceding year as the measure of inflation, less a productivity factor to be determined by the Commission after an evidentiary hearing. An Incumbent Local Exchange Telephone Company may adjust its rates for basic local exchange telephone service or non-basic services only so long as its aggregate revenues for basic local exchange telephone services or non-basic services generated by such changes do not

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exceed the aggregate revenues generated by the maximum rates permitted by the rate flexibility plan.

(h) Notwithstanding the annual adjustments permitted in Subsection (g), the initial basic local exchange telephone service rates for an Incumbent Local Exchange Telephone Company subject to a plan shall not increase for a period of four (4) years from the date the Incumbent Local Exchange Telephone Company becomes subject to such regulation. At the expiration of the four (4) year period, an Incumbent Local Exchange Telephone Company shall be permitted to adjust annually its rates for Basic Local Exchange Telephone Services in accordance with the methods set forth in Subsection (g) provided that in no event shall the rate for residential Basic Local Exchange Telephone Service be increased in any one year by more than the percentage change in inflation for the United States using the Gross Domestic Product-Price Index (GDP-PI) from the preceding year as the measure of inflation, less a productivity factor to be determined by the Commission after an evidentiary hearing.

(i) The maximum rates for any new Non-Basic Service first offered after the effective date of this Act shall not exceed the stand alone cost of the service.

(j) If not resolved by agreement, the Commission shall, on petition of the competing Telecommunications Service Provider, convene a contested case proceeding to establish initial rates for new interconnection services provided by an Incumbent Local Exchange Telephone Company subsequent to the effective date of this Act, which rates

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shall be set in accordance with the principles set forth in this Act. Notwithstanding any other provision of this Act, a rate flexibility plan shall permit a maximum annual adjustment in the rates for interconnection services that is capped at the percentage change in inflation for the United States using the Gross Domestic Product-Price Index (GDP-PI) from the preceding year as the measure of inflation, less a productivity factor to be determined by the Commission after an evidentiary hearing. An Incumbent Local Exchange Telephone Company may adjust its rates for interconnection services only so long as its aggregate revenues generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by this Subsection; provided that each new rate must comply with the requirements of Section 65-5-208 and the provisions of this Title prohibiting unjust discrimination, undue preferences, and other unjust practices. Upon filing by a Competing Telecommunications Service Provider of a complaint, such rate adjustments will become subject to Commission review of the compliance of those adjustments with the provisions of this Act and rules promulgated under this Act. The Commission shall enter a final order approving, modifying or rejecting such adjustment as expeditiously as practicable. On the filing of such a complaint, the imposition of such adjustments shall be stayed pending the determination of the issues raised in that complaint.

(k) Subsequent rates of incumbent Local Exchange Telephone Companies under a rate flexibility plan, for specific Non-Basic Services may be set by that company within the

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allowed maximum and minimum rates, by giving prior notice to affected customers and by filing tariff revisions with the Commission under such rules as the Commission may adopt. Any such rates must also be subject to the provisions of this Title prohibiting unjust discrimination, undue preferences and unfair practices and to the provisions of Chapter 4 of this Title concerning interconnection and the provisions of any rules adopted pursuant to Section 65-5-208.

(l) The Commission shall monitor the continued efficacy of any rate flexibility plan and, by the issuance of show cause orders or by entertaining petitions from the Incumbent Local Exchange Telephone Company assure that the plan remains consistent with the policies set forth in this section and in Section 65-5-208.

(m) Any price regulation plan for an Incumbent Local Exchange Telephone Company adopted pursuant to this Section shall terminate four (4) years after the date it is implemented. At least six (6) months prior to the date of such termination, the Commission shall convene a contested case proceeding to determine the nature and extent of regulation of the prices of that Incumbent Local Exchange Telephone Company.

SECTION 11. Tennessee Code Annotated, Title 65, Chapter 5, Part 2, is amended by adding the following new language as:

65-5-210. Construction. -- (a) Unless otherwise expressly provided, the time periods for Commission action provided in Sections 65-5-207, 65-5-208 and 65-5-209 shall

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be construed as directory, but the Commission shall exercise its best efforts to comply with them.

(b) Nothing in Sections 65-5-207, 65-5-208 or 65-5-209 shall be construed as impairing the efficacy of Commission rules and policies with respect to the regulation of interexchange carriers or resellers in effect as of the effective date of this Act.

(c) Nothing in Sections 65-5-207, 65-5-208 or 65-5-209 shall be construed as removing the powers of the Commission to regulate the requirements for, or the contents of, tariffs, price lists or schedules, of notices of rate changes; but in the exercise of that discretionary power the Commission shall observe the principles stated in Sections 65-5-208(a).

(d) In all contested case proceedings before the Commission under this Part, if a party has control over access to facts relevant to a particular issue, the burden of proof as to that issue shall be on that party.

SECTION 12. The Commission shall review its existing rules with respect to telephone companies and shall, as soon as practicable revise them to assure their consistency with the provisions of this Act.

SECTION 13. This Act shall take effect upon becoming a law, the public welfare requiring it.